

# ARKANSAS SUPREME COURT

No. 06-868

NOT DESIGNATED FOR PUBLICATION

WILLIAM R. LEHMAN  
Appellant

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Appellee

Opinion Delivered      October 26, 2006

*PRO SE* MOTIONS TO SUPPLEMENT  
RECORD, FOR EXTENSION OF TIME  
TO FILE BRIEF, AND FOR LEAVE TO  
PROCEED *IN FORMA PAUPERIS*  
[CIRCUIT COURT OF JACKSON  
COUNTY, CV 2006-15, HON. HAROLD  
S. ERWIN, JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT

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## PER CURIAM

Appellant William R. Lehman, an inmate incarcerated in the Arkansas Department of Correction, filed a *pro se* petition for writ of *habeas corpus* in Jackson County Circuit Court, which petition was denied. Appellant has lodged an appeal of that order in this court, and in the motions now before us requests that we permit him to supplement the record, that we grant an extension of time in order to file appellant's brief, and that he be permitted to proceed *in forma pauperis*. Because it is clear that appellant could not prevail on appeal, we must dismiss his appeal and the motions are therefore moot.

This court has consistently held that an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of *habeas corpus*, will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per*

*curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). Here, it is clear that appellant cannot prevail because he failed to state grounds in his petition cognizable in a proceeding for a writ of *habeas corpus*.

The judgment attached to appellant's petition indicates that he was found guilty of incest in a trial to the court and sentenced to 60 months' imprisonment on that charge. The same judgment also reflects that appellant entered a negotiated plea of guilty to a charge of sexual assault in the second degree and received a suspended imposition of sentence for 120 months and 120 months on probation. The claims asserted in appellant's petition were as follows: (1) that he was illegally sentenced to both 120 months' suspended imposition of sentence and 120 months' probation on the charge of sexual assault; (2) that the trial court acted in excess of its authority as a result of a failure to comply with certain statutory requirements concerning psychological evaluations and because the evaluation performed did not comply with those requirements; (3) that he would not have entered his guilty plea but for mental incapacity and ineffective assistance of counsel; (4) that counsel was ineffective for a number of reasons; (5) that the time for speedy trial had expired prior to his conviction; (6) that due process required a full competency hearing, and that this and other claims were constitutional violations resulting in a lack of jurisdiction on the part of the trial court and a void sentence.

It is well settled that the burden is on the petitioner in a *habeas corpus* petition under Ark. Code Ann. 16-112-103 (1987) to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of *habeas corpus* should issue. *Young v. Norris*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (February 2, 2006) (*per*

*curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.*; see also *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989).

We first note that appellant is incarcerated as a result of the charge of incest, and is not presently incarcerated for the charge of sexual assault. Appellant cannot demonstrate that he is detained, illegally or otherwise, on the sexual assault charge, and is, therefore, unable to comport with the requirements of section 16-112-103 as to any claims relating to the sentence imposed upon that charge or his guilty plea.

As to the remaining claims applicable to appellant's incarceration resulting from the conviction for incest, none show a lack of jurisdiction or that the commitment was invalid on its face. While appellant attempts to couch his claims as demonstrating a lack of authority by the trial court, the claims in appellant's petition only assert various alleged procedural defects and irregularities that do not, in fact, suggest any invalidity of the commitment that is clear on its face or that there is any lack of subject-matter jurisdiction. A *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. *Friend v. Norris*, 364 Ark. 315, \_\_\_ S.W.3d \_\_\_ (2005) (*per curiam*). Irregularities at trial and ineffective assistance of counsel are factual issues that require the kind of inquiry well beyond the facial validity of the commitment and should have been addressed during trial, through a direct appeal, or in a petition for postconviction relief under Ark. R. Crim. P. 37.1. See *id.*

None of the claims appellant raised in his petition were cognizable in a *habeas corpus* proceeding. The circuit court would have had no basis for issuance of the writ. It is clear on the record that appellant can not prevail, and we accordingly dismiss the appeal. The motions are

therefore moot.

Appeal dismissed; motions moot.